IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7427 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

A'BAD MUNI. TRANSPORT SERVICE

Versus

WORKMAN EMPLOYED

Appearance:

1. Special Civil Application No. 7427 of 1989

MR KERIAL for MR BP TANNA for Petitioner No. 1

..... for Respondent No. 1

MR CB DASTOOR for Respondent No.2, 2/1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 09/10/2002

ORAL JUDGEMENT

1. This petition was dismissed in absence of the learned Counsel for the petitioner by this Court on 17.1.2002. Within 2 days thereof i.e. on 23.1.2002 the Applicant filed Restoration Application i.e. Misc.

Civil Application No.1268 of 2002 in this petition to restore it on the grounds stated in it. The aforesaid petition was placed before this Court for the first time on 17.9.2002 and at the joint request of the learned Counsel for the parties which was kept today. Today, the said Restoration Application was granted and as requested by the learned Counsel for the parties this petition is being heard and disposed of today by this order.

2. The petitioner - Ahmedabad Municipal Transport Service (for short "AMTS") has challenged in this petition the impugned Award passed by the Industrial Tribunal on 4.7.1989 in Ref. (I.T.) No.369/81.

3. The dispute relates to a single demand of the workman - respondent No.2 Shri M.J.Mansuri, Assistant Traffic Inspector in A.M.T.S. who was getting less wages than his Juniors Shri C.P.Vyas, P.P.Vyas, N.M.Vyas and S.S.Pathak.

4. Learned Tribunal found considerable force in the demand made by the Union on behalf of the respondent No.2 - workman that in pay fixation in revised pay scale as per the Award of Shri Thakor, the pay of Shri Mansuri should not be less than his aforesaid Juniors. in view of the above, Industrial Tribunal directed the petitioner A.M.T.S. to refix the pay of Shri Mansuri - workman respondent No.2 (now deceased), with effect from 1.1.1976 i.e. the day from which the revised pay scale has come into force as per the Award of Shri Thakor in such a way that his pay is not fixed at an amount less than his Junior. It was further directed by the Industrial Tribunal that if the pay of Juniors of Shri Mansuri fixed at Rs.400/- with effect from 1.1.1976 then the pay of Shri Mansuri be fixed at Rs.400/- from that date and the arrears becoming due to be paid within 3 months from the date of the Award dated 4.7.1989.

5 Having carefully gone through the impugned Award passed by the Industrial Tribunal, I am of the considered opinion that the Industrial Tribunal has not committed any error, either on facts or on law, or jurisdictional error which calls for any interference by this Court in its jurisdiction under Article 227 of the Constitution of India. In case of MOHD.YUNUS V/S. MOHD.MUSTAQIM & ORS., reported in AIR 1984 SC 38, the Hon'ble Supreme Court has held that the powers of the High Court under Article 227 is limited to seeing that an inferior Court or Tribunal functions within the limits of its authority and not to correct an error apparent on the face of the record much less an error of law. In exercising the supervisory

power under Art. 227, the High Court does not act an an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.

6. In view of the above binding decision of the Hon'ble Supreme Court there is hardly any scope for this Court to interfere with the impugned Award passed by the learned Tribunal. In view of the clear Award passed by the Tribunal, Shri Kerial, learned Counsel appearing for Shri Tanna for the petitioner, was hardly in a position to challenge the impugned Award passed by the Tribunal. However, he submitted that even if the petitioner wants to comply with the Award then also the petitioner would be finding difficulty, in the sense that they do not have documents. He submitted that if the respondent - workman produce any document in supports of his claim, then the petitioner may consider it and try to comply with the Award passed by the Tribunal at the earlier. However, it was submitted by Shri Dastoor, appearing for the respondent Union that the workman has got no document with him, therefore, there is no question of giving any document in support of his claim to the petitioner.

7. However, Shri Dastoor submitted that the impugned Award passed by the Tribunal is more than clear and the petitioner has to first refix the pay of the respondent workman with effect from 1.1.1976 in such a way that his pay is not fixed less than the pay even to his Junior. There is lot of force in the submissions made by Shri Dastoor for the respondent Union. The petitioner has to first refix the pay of workman - respondent No.2 with effect from 1.1.1976 in such a way that his pay is not fixed less than what was paid to his juniors. The Tribunal has also made it clear in operative part of its Award that if the pay of juniors of workman - respondent No.2 is fixed at Rs.400/- then the respondent No.2 Shri Mansuri has to be paid accordingly. The arrears also becoming due was to be paid to Shri Mansuri as per the Award passed by the Industrial Tribunal within 3 months from the date of the Award, but the said Award was stayed by the Division Bench of this Court (Coram : A.P.Ravani & D.G.Karia, JJ., as Their Lordships then were), on 28.12.1990 on the condition that the Authorized Officer of the petitioner Corporation shall file an Undertaking before this Court to the effect that in case if the Corporation fails in the petition then the respondent workman be paid the amount as per the directions given by the Tribunal in its Award together with interest at the rate of 18 % p.a. within a period of one month from the

date of final decision. The amount of interest shall be calculated from 4.10.1989 till the date of payment.

8. From the aforesaid order dated 28.12.1990 passed by the Division Bench of this Court in this petition it also appears that Their Lordships directed that petition to be placed for final hearing in the first week of March, 1991, but unfortunately due to some or the other reasons the matter could not be heard and finally decided till today. Be that as it may.

9. Once the Division Bench of this Court had passed the interim order on condition then, while finally deciding this matter, this Court, as Single Judge, can not take different view of the matter though it may be an opinion of the Division Bench to grant interest at the rate of 18 % p.a. However, learned Counsel Shri Dastoor appearing for the respondent workman fairly conceded that in view of the situation prevailing in 1990 and the situation prevailing today in 2002, after almost 12 years, where the rate of interest has substantially gone down, he would be satisfied if the interest is paid at the rate of 9 % instead of 18 % provided the petitioner pays the amount within one month from today as per the order passed by the Division Bench of this Court on 28.12.1990.

10. In view of the above, while dismissing this petition, the petitioner is directed to pay the amount to the respondent No.2 workman as per the impugned Award dated 4.7.1989 passed by the Industrial Tribunal in Ref. (IT) No.369 of 1981 together with interest at the rate of 9 % p.a. within a period of one month from today. However, it is made clear that if the petitioner fails to pay the dues with interest at the rate of 9 % p.a. within one month from today then the petitioner has to pay interest at the rate of 18 % p.a. as per the direction issued by the Division Bench of this Court on 28.12.1990 in this petition. The amount of interest shall be calculated from October 04, 1989 till the date of payment.

11. With the aforesaid direction this petition is dismissed. Rule discharged with costs.

D.S. to respondent No.2 permitted.

sd/-

Date : October 09, 2002 (B.J.Shethna, J.)

sas